

REMARKS

Amendment D does not raise any new issues, nor does the Amendment introduce "new matter." Claim 1, the only independent claim, has been revised by the introduction of the term -- to enable it to stretch to accommodate bowls of different sizes -- after recitation of the "slightly elastic" nature of applicant's unique insulating sleeve. Claims 5-8 have been cancelled, so only claim 1, and dependent claims 2-4, remain in contest.

Attorney for applicants again notes that the Examiner has not provided an Abstract, or a partial translation, to support her characterization of the primary reference, i.e. the German patent publication to Hoffmann (DE 29913627). The absence of such supporting document is at variance with the requirements of MPEP 706.02, clause II.

In marked contrast, the partial translation of Hoffmann, supplied by the applicants, reveals that such German patent does not disclose "an insulating sleeve for a drinking glass...", nor is the stand, or support, of Hoffmann comprised of "slightly elastic insulating material," as set forth in claim 1, as amended. Additionally, the "insulating material" in Hoffmann is not "slightly elastic", and thus cannot stretch to accommodate bowls of different sizes, as now set forth in claim 1. Hoffmann also lacks any suggestion regarding a band, in use, stretching about the bowl of the glass, as noted in claim 4.

As amply demonstrated by the partial translation, identified as Exhibit A in Amendment C, the body (2) of the Hoffmann stand is made of a solid material (see page 3, lines 22-25), or a solid or hollow material (see page 4, lines 25-27). The specific solid materials that are used in Hoffmann are described at page 2, lines 20-23 and at page 4, lines 25-27. Furthermore, in the portion of the cited Hoffmann document, appearing at page 3, line 27 - page 4, line 2, the specific materials used by Hoffmann are glass, acrylics, plastics, artificial stone, natural stone, clay, ceramic, porcelain, and stainless steel, which do not qualify as elastic materials, as such term is conventionally used. All of these materials are rigid and inflexible in nature, in contrast to applicant's slightly elastic insulating sleeve which conforms to glasses of different sizes, and snugly receives the glass therein.

The term "slightly elastic" appears in the application, as filed - see, for example, page 7, line 27, and the application discusses the advantages of an insulating sleeve for receiving glasses of different sizes. The versatility of applicants' sleeve is not disclosed, or even suggested in the Hoffmann patent publication, the primary reference.

The Examiner's reliance upon Hoffmann is misplaced, for Hoffmann clearly does not teach, or suggest, all of the unique features of applicant's slightly elastic insulating sleeve, as reflected in the claims of record, namely, claims 1-4. Since the material(s) employed by Hoffmann are inflexible, the opening(s) in the stand or support cannot temporarily be expanded, and then reduced in size, to allow passage of stem and foot portions of the glass. The stand or support can not accommodate glasses of different sizes. Consequently, combining the rigid, inflexible holder or stand disclosed in Hoffmann with an elongated, releasable closure as taught by Mogil, would not anticipate applicants' slightly elastic insulating sleeve, for the body of the "combined" device would still be rigid, in stark contrast to applicant's slightly elastic insulating sleeve that fits snugly about a bowl of wine glasses of different sizes, the band that fits around the upper edge of the bowl, etc.

Attorney for applicants further asserts that a person of ordinary skill in the art to which the invention pertains, i.e., insulating receptacles for drinking, would have no reason (teaching, suggestion or motivation) for combining the disclosure of Hoffmann, with the secondary citation to Mogil to add an elongate releasable closure means extending from the opening, and adjacent to, but spaced from the other opening, as expressed in the four claims of record. Mogil discloses an insulating sleeve which fits about a squeezable plastic container, having a cylindrical section. The shortcomings of Mogil have been discussed, at some length, on pages 5-7 of Amendment A, and need not be repeated at this junction.

Beuke, cited in the rejection of claims 4 and 5 in the Office Action of October 6, 2009 does not remedy the shortcomings of Hoffmann and/or Mogil, and does not provide a reason for combining the disparate disclosure of the three patents. Admittedly Beuke discloses a thermal insulator for a wide range of tubular beverage containers, such as soda cans, juice bottles, etc., but the insulator is composed of several elastic panels joined together, but no mention is made of a wine glass, with its bowl, stem, etc.

In summary, not only would a person skilled in the art not reasonably combine the disclosure of Hoffmann with the secondary citation of Mogil, and/or the tertiary citation to Beuke, but even if such combination were made, the resulting device would be a rigid device with an elongate releasable closure means which would not allow the opening to be temporarily enlarged to allow passage of the stem and foot of the glass therethrough and then reduced so that the sleeve so that it receives the glass therein as claimed in the present application. The insulator device worked to accommodated wine glasses with bowls (of different sizes) and stems

and insulate same. Because the body is rigid, the opening is not capable of being enlarged and then reduced (emphasis added), nor is the body adaptable to receive the bowls of wine glasses of different sizes. The rejection of claims 1-4 should be withdrawn, and the application should be passed to allowance.

The Office summary on page 1 indicates that the Office Action of March 29, 2010, is non-final in nature. The text of the Office Action, on page 6, indicates that the Office Action is "made final." To err on the side of caution, a Notice of Appeal is filed, to allow careful consideration of the instant Amendment.

If the Examiner believes that a telephone conference, or a personal interview, would resolve any issue remaining in contest, the Examiner is urged to contact the undersigned attorney at 202-216-9505, ext. 245.

Respectfully submitted,

STEIN MCEWEN, LLP

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By: Martin P. Hoffman
Martin P. Hoffman
Registration No. 22,261

1400 Eye St., N.W.
Suite 300
Washington, D.C. 20005
Telephone: (202) 216-9505
Facsimile: (202) 216-9510